

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Joshua Nelson,)	Case No. 8:16-cv-03453-JMC-JDA
)	
Plaintiff,)	
)	
v.)	<u>REPORT AND RECOMMENDATION</u>
)	<u>OF MAGISTRATE JUDGE</u>
Ofc. D. Gilmore,)	
)	
Defendant.)	

This matter is before the Court on a motion to dismiss and to remand filed by Plaintiff [Doc. 44] and a motion to dismiss filed by Plaintiff [Doc. 55]. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), D.S.C., this magistrate judge is authorized to review all pretrial matters in this case and to submit findings and recommendations to the District Court.

On June 15, 2017, Plaintiff filed a motion to dismiss and to remand.* [Doc. 44.] Defendant filed a response to the motion on June 29, 2017, consenting to dismissal but objecting to Plaintiff's attempt to remand the case. [Doc. 45.] On August 23, 2017, the undersigned took the motion to dismiss and to remand under advisement, clarifying that this Court cannot remand Plaintiff's case to state court because it was not originally filed in state court and directing Plaintiff to notify the Court whether he seeks to have this case dismissed so that he may refile it in state court. [Doc. 51.] In response to that motion, Plaintiff filed a motion to dismiss his case on September 5, 2017. [Doc. 55.] Defendant filed a response on September 22, 2017, consenting to the dismissal. [Doc. 56.]

*Plaintiff did not title his filing a motion; however, the Clerk appropriately filed it as a motion seeking to dismiss and to remand.

Under the Federal Rules of Civil Procedure, a plaintiff may request the court to dismiss his action. Fed. R. Civ. P. 41(a)(2). The court may dismiss the action “on terms that the court considers proper.” *Id.* Unless the court orders otherwise, dismissal of an action at the plaintiff’s request is without prejudice. *Id.* Here, Defendant consents to the dismissal of this case. [Docs. 45; 56.] Based on the record in this case, the Court recommends Plaintiff’s motion to dismiss be granted.

CONCLUSION

Wherefore, based upon the foregoing, the Court recommends Plaintiff’s motion to dismiss [Doc. 55] be GRANTED, Plaintiff’s motion to dismiss and to remand [Doc. 44] be FOUND AS MOOT, and the Complaint be dismissed without prejudice.

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

September 25, 2017
Greenville, South Carolina